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10 Attorneys for Plaintiff

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE DISTRICT OF ARIZONA

13 United States America,

14 Plaintiff,

CR-21-02714-001-TUC-RM (MSA)

15 vs.

PLEA AGREEMENT

16 Devonte Okeith Mathis,

17 Defendant.

19 The United States of America and the defendant, DEVONTE OKEITH MATHIS,  
20 agree to the following disposition of this matter:

21 PLEA

22 1. The defendant agrees to plead guilty to an Information, which charges the  
23 defendant with Count 1: a Class D felony violation of 21 U.S.C. §§ 846, 841(a)(1) and  
24 841(b)(1)(D), Conspiracy to Possess with Intent to Distribute Marijuana; and Count 2: a  
25 Class A felony violation of 18 U.S.C. §§ 924(c)(1)(A) and 2, Using and Carrying a Firearm  
26 During and in Relation to a Drug Trafficking Crime, and Possession of a Firearm in  
27 Furtherance of a Drug Trafficking Crime. The Indictment will be dismissed at sentencing.

28

### Elements of the Offenses

2. The elements of Conspiracy to Possess with Intent to Distribute Marijuana are as follows:

a. The defendant agreed with at least one other person to commit the crime of Possession with Intent to Distribute Marijuana as charged in Count 1 of the Information;

b. The defendant became a member of the conspiracy knowing that its object was the Possession with Intent to Distribute Marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(D) and intending to accomplish said object.

3. The elements of Using and Carrying a Firearm During and in Relation to a Drug Trafficking Crime, and Possession of a Firearm in Furtherance of a Drug Trafficking Crime are as follows:

- a. The defendant or a co-conspirator knowingly or intentionally possessed, used, or carried a firearm; and
- b. The firearm was possessed in furtherance of, or used or carried during and in relation to, a drug trafficking offense for which the defendant may be prosecuted in a court of the United States.

4. A defendant may be convicted of the substantive offenses committed by a co-conspirator in furtherance of a conspiracy under the doctrine of *Pinkerton v. United States*, 328 U.S. 640, 645–46 (1946). Pursuant to *Pinkerton*, a defendant can be convicted of a § 924(c) violation if a co-conspirator used or carried a firearm during and in relation to a criminal scheme. *See, e.g., United States v. Johnson*, 886 F.2d 1120, 1123 (9th Cir. 1989); *United States v. Allen*, 425 F.3d 1231, 1234 (9th Cir. 2005) (“Although Allen did not himself use, carry, or possess a gun in furtherance of the robbery, he could be convicted as a co-conspirator.”) To establish *Pinkerton* liability, the violation of 18 U.S.C. §§ 924(c)(1)(A) must be both in furtherance of the marijuana conspiracy (in which both the defendant and the actual user or carrier were participants) and reasonably foreseeable. *See United States v. Henson*, 123 F.3d 1226, 1239 (9th Cir. 1997); *United States v. Long*, 301

1 F.3d 1095, 1103 (9th Cir. 2002) (“*Pinkerton* extends liability to a conspirator for a  
2 coconspirator’s substantive offenses ‘when they are reasonably foreseeable and committed  
3 in furtherance of the conspiracy.’”) (citing *Pinkerton*, 328 U.S. at 645–48, 66). Put  
4 differently, “[w]here the substantive offense is the basis for § 924(c) liability, the issue is  
5 whether the defendant could reasonably foresee that a firearm would be used.” *Henson*,  
6 123 F.3d at 1239.

7        5.     A defendant may also be found guilty of Using and Carrying a Firearm  
8 During and in Relation to a Drug Trafficking Crime, and Possession of a Firearm in  
9 Furtherance of a Drug Trafficking Crime, even if the defendant personally did not commit  
10 the act or acts constituting the crime but aided and abetted in its commission. To “aid and  
11 abet” means intentionally to help someone else commit a crime. To prove a defendant  
12 guilty of Using and Carrying a Firearm During and in Relation to a Drug Trafficking Crime,  
13 and Possession of a Firearm in Furtherance of a Drug Trafficking Crime by aiding and  
14 abetting, the government must prove each of the following beyond a reasonable doubt:

15 a. First, someone else committed the crime of Using and Carrying a Firearm  
16 During and in Relation to a Drug Trafficking Crime, and Possession of a Firearm in  
17 Furtherance of a Drug Trafficking Crime;

25 d. Fourth, the defendant acted before the crime was completed.

## Maximum Penalties

27       6.     The defendant understands that the maximum penalties for Count 1,  
28     Conspiracy to Possess with Intent to Distribute Marijuana, to which he is pleading, are a

1 fine of \$250,000, a term of imprisonment up to five (5) years, or both, and a term of  
2 between two (2) years and lifetime supervised release. The maximum penalties for Count  
3 2, Using and Carrying a Firearm During and in Relation to a Drug Trafficking Crime, and  
4 Possession of a Firearm in Furtherance of a Drug Trafficking Crime, to which he is  
5 pleading, are a fine of \$250,000, a term of up to life imprisonment with a mandatory  
6 minimum term of imprisonment of five (5) years, or both, and a term of not more than five  
7 (5) years supervised release. By statute, the term of imprisonment in Count 2 must run  
8 consecutive to all other counts.

9 7. The defendant agrees to pay a fine unless the defendant establishes the  
10 applicability of the exceptions contained in § 5E1.2(e) of the Sentencing Guidelines.

11 8. Pursuant to 18 U.S.C. § 3013, the defendant shall pay a special assessment  
12 of \$100.00 per felony count. The special assessment is due and payable at the time the  
13 defendant enters the plea of guilty and shall be paid no later than the time of sentencing  
14 unless the defendant is indigent. If the defendant is indigent, the special assessment will  
15 be collected according to the provisions of Chapters 227 and 229 of Title 18, United States  
16 Code.

17 Drug Conviction & Immigration Consequences

18 9. The defendant understands and acknowledges that pleading guilty may result  
19 in the termination or denial of certain food stamp, social security, and other benefits for the  
20 defendant and the defendant's immediate family pursuant to 21 U.S.C. §§ 862 and 862a.

21 STIPULATIONS, TERMS AND AGREEMENTS

22 Agreements Regarding Sentencing

23 10. Guideline Calculations: Although the parties understand that the Guidelines  
24 are only advisory and just one of the factors the Court will consider under 18 U.S.C.  
25 § 3553(a) in imposing a sentence, pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the parties  
26 stipulate and agree that the following guideline calculations are appropriate for the charge  
27 for which the defendant is pleading guilty should the Court find that the defendant was an  
28 average participant in the offense:

1	Base Offense Level (2.5 - 5 kg Marijuana)	2D1.1(c)(16)	10
2	Base Offense Level (924(c)(1)(A))	2K2.4	5 years consecutive
3	Grouping (Counts 1 & 2)	3D1.4	+0
4	<u>Acceptance of Responsibility</u>	3E1.1(a) & (b)	-2
5	Total Adjusted Offense Level:		8

\*The cross reference for First Degree Murder may apply to Count 1, pursuant to U.S.S.G. § 2D1.1(d)(1), which would make the Base Offense Level 43 (U.S.S.G. §2A1.1), although the statutory maximum for this offense remains five (5) years' imprisonment.

9       11. The government and the defendant agree and stipulate that, for purposes of  
10 entering into this plea agreement, the defendant's Base Offense Level will be calculated on  
11 the basis that the controlled substance was 3.124 kilograms of marijuana.

12. Sentencing Agreement: Pursuant to Fed. R. Crim. P., Rule 11(c)(1)(C), the  
13 government and the defendant stipulate and agree to a total combined sentence of:

## 14 No greater than 10 years' imprisonment.

15                   The defendant may withdraw from the plea agreement if he/she receives a  
16 sentence in excess of the stipulated sentence listed above. The government may withdraw  
17 from the plea agreement if the Court sentences the defendant below the mandatory  
18 minimum terms of imprisonment for this offense.

19       13. Restitution: Pursuant to 18 U.S.C. § 3663 and/or 3663A, the defendant  
20 specifically agrees to pay full restitution, regardless of the resulting loss amount but in no  
21 event more than \$1,000,000, to all victims directly or proximately harmed by the  
22 defendant's "relevant conduct," including conduct pertaining to any dismissed counts or  
23 uncharged conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct  
24 constitutes an "offense" under 18 U.S.C. §§ 2259, 3663 or 3663A. The defendant  
25 understands that such restitution will be included in the Court's Order of Judgment and that  
26 an unanticipated restitution amount will not serve as grounds to withdraw the defendant's  
27 guilty plea or to withdraw from this plea agreement.

14. The defendant understands that if the defendant violates any of the conditions of the defendant's supervised release, the supervised release may be revoked. Upon such revocation, notwithstanding any other provision of this agreement, the defendant may be required to serve a term of imprisonment or the defendant's sentence may otherwise be altered.

15. The defendant and the government agree that this agreement does not in any manner restrict the actions of the government in any other district or bind any other United States Attorney's Office.

16. The defendant understands and agrees to cooperate fully with the United States Probation Office in providing (a) all criminal history information, i.e., all criminal convictions as defined under the Sentencing Guidelines; (b) all financial information, i.e., present financial assets or liabilities that relate to the ability of the defendant to pay a fine or restitution; (c) all history of drug abuse which would warrant a treatment condition as part of sentencing; and (d) all history of mental illness or conditions which would warrant a treatment condition as part of sentencing.

17. If the Court, after reviewing this plea agreement, concludes any provision is inappropriate, it may reject the plea agreement pursuant to Rule 11(c)(5), Fed. R. Crim. P., giving the defendant, in accordance with Rule 11(d)(2)(A), Fed. R. Crim. P., an opportunity to withdraw defendant's guilty plea.

## AGREEMENT AS TO FORFEITURE

18. a. The defendant, DEVONTE OKEITH MATHIS, knowingly and voluntarily agrees to forfeit all right, title and interest in the following:

1. Glock 21, .45 Pistol, Serial Number (S/N) EPF070;
2. Para Hi-Cap P14 .45 S/N K007324 with one empty magazine;
3. Loaded .45 caliber magazine and (1) .45 caliber round of ammunition;
4. Black loaded magazine with .45 caliber rounds of ammunition;  
and

1                   5. Scherer .45 loaded magazine with .45 caliber rounds of  
2                   ammunition.

3                   b. The defendant knowingly and voluntarily agrees not to pursue any  
4                   filed claims, and to waive all interest in the asset listed above, in any administrative, civil  
5                   or criminal judicial proceeding, whether state or federal, which may be initiated.

6                   c. The defendant knowingly and voluntarily agrees to consent to the  
7                   entry of orders of forfeiture for the forfeitable assets and waives the requirements of Federal  
8                   Rules of Criminal Procedure, Rule 32.2 regarding notice of the forfeiture in the charging  
9                   instrument, announcement of the forfeiture at sentencing, and incorporation of the  
10                  forfeiture in the judgment.

11                  d. The defendant acknowledges that he understands that the forfeiture of  
12                  assets is part of the sentence that may be imposed in this case and waives any failure by  
13                  the Court to advise him of this, pursuant to Federal Rule of Criminal Procedure 11(b)(1)(J),  
14                  at the time his guilty plea is accepted.

15                  e. The defendant knowingly and voluntarily agrees to waive all  
16                  constitutional, legal, and equitable defenses to all constitutional and statutory challenges in  
17                  any manner (including direct appeal, habeas corpus, any jeopardy defense or claim of  
18                  double jeopardy, or any other means), and knowingly and voluntarily agrees to waive any  
19                  claim or defense under the Eighth Amendment to the United States Constitution, including  
20                  any claim of excessive fine or punishment, to any forfeiture carried out in accordance with  
21                  this plea agreement on any grounds.

22                  f. The defendant warrants that he is the owner or has an interest in the  
23                  property listed above, and knowingly and voluntarily agrees to hold the United States, its  
24                  agents and employees harmless from any claims whatsoever in connection with the seizure  
25                  or forfeiture of the above-listed assets covered by this agreement.

26                  g. The defendant knowingly and voluntarily agrees and understands the  
27                  forfeiture of the assets listed above shall not be treated as satisfaction of any assessment,  
28                  fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon

1 the defendant in addition to the forfeiture.

2 Waiver of Defenses and Appeal Rights

3 19. Provided the defendant receives a sentence in accordance with this plea  
4 agreement, the defendant waives (1) any and all motions, defenses, probable cause  
5 determinations, and objections that the defendant could assert to the indictment or  
6 information; and (2) any right to file an appeal, any collateral attack, and any other writ or  
7 motion that challenges the conviction, an order of restitution or forfeiture, the entry of  
8 judgment against the defendant, or any aspect of the defendant's sentencing-including the  
9 manner in which the sentence is determined, the determination whether the defendant  
10 qualifies for "safety valve" (U.S.S.G. § 5C1.2 and 18 U.S.C. § 3553(f)), and any sentencing  
11 guideline determinations. The sentence is in accordance with this agreement if the sentence  
12 imposed does not exceed the stipulated sentence. The defendant further waives: (1) any  
13 right to appeal the Court's entry of judgment against the defendant; (2) any right to appeal  
14 the imposition of sentence upon the defendant under Title 18, United States Code, Section  
15 3742 (sentence appeals); (3) any right to appeal the district court's refusal to grant a  
16 requested variance; (4) any right to collaterally attack defendant's conviction and sentence  
17 under Title 28, United States Code, Section 2255, or any other collateral attack; and (5)  
18 any right to file a motion for modification of sentence, including under Title 18, United  
19 States Code, Section 3582(c) (except for the right to file a compassionate release motion  
20 under 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial of such a motion). The defendant  
21 acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack  
22 the defendant might file challenging his/her conviction or sentence in this case. If the  
23 defendant files a notice of appeal or a habeas petition, notwithstanding this agreement, the  
24 defendant agrees that this case shall, upon motion of the government, be remanded to the  
25 district court to determine whether the defendant is in breach of this agreement and, if so,  
26 to permit the government to withdraw from the plea agreement. This waiver shall not be  
27 construed to bar an otherwise-preserved claim of ineffective assistance of counsel or of  
28

1 “prosecutorial misconduct” (as that term is defined by Section II.B of Ariz. Ethics Op. 15-  
2 01 (2015)).

3 Reinstitution of Prosecution

4 20. Nothing in this agreement shall be construed to protect the defendant in any  
5 way from prosecution for perjury, false declaration or false statement, or any other offense  
6 committed by the defendant after the date of this agreement. In addition, if the defendant  
7 commits any criminal offense between the date of this agreement and the date of  
8 sentencing, the government will have the right to withdraw from this agreement. Any  
9 information, statements, documents, and evidence which the defendant provides to the  
10 United States pursuant to this agreement may be used against the defendant in all such  
11 proceedings.

12 If the defendant’s guilty plea is rejected, withdrawn, vacated, or reversed by any  
13 court in a later proceeding, the government will be free to prosecute the defendant for all  
14 charges as to which it has knowledge, and any charges that were dismissed because of this  
15 plea agreement will be automatically reinstated. In such event, the defendant waives any  
16 objections, motions, or defenses based upon the Speedy Trial Act or the Sixth Amendment  
17 to the Constitution as to the delay occasioned by the later proceedings. Defendant agrees  
18 that the stipulated sentencing ranges set forth under “Agreements Regarding Sentence” will  
19 not be offered if prosecution is re-instituted.

20 Plea Addendum

21 21. This written plea agreement, and any written addenda filed as attachments to  
22 this plea agreement, contain all the terms and conditions of the plea. Any additional  
23 agreements, if any such agreements exist, shall be recorded in a separate document and  
24 may be filed with the Court under seal. Accordingly, additional agreements, if any, may  
25 not be in the public record.

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## WAIVER OF DEFENDANT'S RIGHTS AND FACTUAL BASIS

### Waiver of Rights

3 I have read each of the provisions of the entire plea agreement with the assistance  
4 of counsel and understand its provisions. I have discussed the case and my constitutional  
5 and other rights with my attorney. I understand that by entering my plea of guilty I will be  
6 giving up my right to plead not guilty; to trial by jury; to confront, cross-examine, and  
7 compel the attendance of witnesses; to present evidence in my defense; to remain silent  
8 and refuse to be a witness against myself by asserting my privilege against self-  
9 incrimination; all with the assistance of counsel; to be presumed innocent until proven  
10 guilty beyond a reasonable doubt; and to appeal.

11 I agree to enter my guilty plea as indicated above on the terms and conditions set  
12 forth in this agreement.

13 I have been advised by my attorney of the nature of the charge to which I am entering  
14 my guilty plea. I have been advised by my attorney of the nature and range of the possible  
15 sentence, and that I will not be able to withdraw my guilty plea if I am dissatisfied with the  
16 sentence the court imposes.

17        My guilty plea is not the result of force, threats, assurances or promises other than  
18 the promises contained in this agreement. I agree to the provisions of this agreement as a  
19 voluntary act on my part, rather than at the direction of or because of the recommendation  
20 of any other person, and I agree to be bound according to its provisions. I agree that any  
21 Sentencing Guidelines range referred to herein or discussed with my attorney is not binding  
22 on the Court and is merely an estimate.

23 I agree that this written plea agreement contains all the terms and conditions of my  
24 plea and that promises made by anyone (including my attorney) that are not contained  
25 within this written plea agreement are without force and effect and are null and void.

26 I am satisfied that my defense attorney has represented me in a competent manner.

1 I am not now on or under the influence of any drug, medication, liquor, or other  
2 intoxicant or depressant, which would impair my ability to fully understand the terms and  
3 conditions of this plea agreement.

4 Factual Basis and Relevant Conduct

5 I further agree that the following facts accurately describe my conduct in connection  
6 with the offense to which I am pleading guilty and that if this matter were to proceed to  
7 trial the government could prove the elements of the offense beyond a reasonable doubt:

8 From a date unknown to on or about October 4, 2021, in the District  
9 of Arizona, and elsewhere, I, DEVONTE OKEITH MATHIS, agreed with  
10 another individual(s), known and unknown, to possess approximately 3.124  
11 kilograms of marijuana, a Schedule I controlled substance. As part of the  
12 conspiracy, I intended to deliver the marijuana to another person or persons  
13 and intended to be paid for my participation.

14 In addition to possessing the marijuana with my coconspirator, I knew  
15 that my coconspirator possessed two handguns: a Glock 21, .45 Pistol, with  
16 Serial Number (S/N) EPF070, and a Para Hi-Cap P14 .45 S/N K007324, in  
17 furtherance of the drug conspiracy. It was reasonably foreseeable that my  
18 co-conspirator not only possessed these firearms in furtherance of the drug  
19 conspiracy, but that he would carry and use these two handguns during and  
20 in relation to the drug trafficking conspiracy.

21 3-13-23  
22 Date

*Stephanie J. Meade for D w/*  
23 DEVONTE OKEITH MATHIS  
Defendant *permission*

24 DEFENSE ATTORNEY'S APPROVAL

25 I have discussed this case and the plea agreement with my client in detail and have  
26 advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the  
27 constitutional and other rights of an accused, the factual basis for and the nature of the  
28

1 offense to which the guilty plea will be entered, possible defenses, and the consequences  
2 of the guilty plea, including the defendant's waiver of the right to appeal. No assurances,  
3 promises, or representations have been given to me or to the defendant by the government  
4 or by any of its representatives which are not contained in this written agreement. I concur  
5 in the entry of the plea as indicated above and on the terms and conditions set forth in this  
6 agreement as in the best interests of my client. I agree to make a bona fide effort to ensure  
7 that the guilty plea is entered in accordance with all the requirements of Rule 11, Fed. R.  
8 Crim. P.

9 3.13.23  
10 Date

  
STEPHANIE MEADE  
Attorney for Defendant

12 GOVERNMENT'S APPROVAL

13 I have reviewed this matter and the plea agreement. I agree on behalf of the United  
14 States that the terms and conditions set forth are appropriate and are in the best interests of  
15 justice.

16 GARY M. RESTAINO  
United States Attorney  
District of Arizona

17 DIMITRA SAMPSON  
Digitally signed by DIMITRA  
SAMPSON  
Date: 2023.03.13 14:15:23 -07'00'

18 Date  
19 DIMITRA H. SAMPSON  
KEITH E. VERCAUTEREN  
LINDSAY L. SHORT  
20 Assistant U.S. Attorneys  
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